

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

EARL MAYFIELD,

Plaintiff,

v.

No. CIV 07-149 JH/LFG

PETER HACKETT, Officer, Albuquerque
Police Department,
DUFF RYAN, Officer, Albuquerque
Police Department,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S FINDINGS
AND RECOMMENDATIONS REGARDING
PARTIAL DISMISSAL OF COMPLAINT**

THIS MATTER came before the Court on the Magistrate Judge's Findings and Recommended Disposition, filed December 18, 2006 [Doc. 43]. Plaintiff did not file objections and the deadline for filing objections has passed. The Court accepts the findings and recommendations of partial dismissal of Plaintiff's Complaint.

In accordance with Wallace v. Kato, 127 S. Ct. 1091 (2007), the Court observes that Plaintiff may elect to re-file the dismissed claims under § 1983 if he still wishes to proceed on those claims, once the state criminal proceedings are terminated. The Court will apply equitable tolling, as appropriate, to those claims so that Mayfield will not suffer prejudice. Id., 127 S.Ct. 1099 n.4.

IT IS HEREBY ORDERED that the findings and recommendations of the United States Magistrate Judge are adopted by the Court.

IT IS FURTHER ORDERED that the following claims be dismissed, without prejudice: (1) those in connection with the incident of December 16, 2005; (2) those regarding April 4, 2006 incident involving alleged harassment of Mayfield by Defendants' actions in following him; (3) those in connection with the incident of July 6-7, 2006; and, (4) those regarding allegations that Defendants planted drug evidence in order to bring false charges of trafficking and tampering with evidence against Mayfield, in relation to incident of September 26, 2006.

IT IS FURTHER ORDERED that the following claims will proceed: (1) those in connection with the incident of April 4, 2006, in which Mayfield alleged Defendants conducted surveillance on him without justification and employed excessive force in Taser-ing him; (2) those in connection with incident of April 7, 2006; (3) those in connection with incident of April 16, 2006; and (4) those in connection with the incident of September 26, 2006, in which Mayfield alleged that Defendants conducted unreasonable searches of Mayfield's person.

IT IS SO ORDERED.


UNITED STATES DISTRICT JUDGE